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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Andrew WITKOWSKI, et al. :

Serial No.: 09/886,839 :

Group Art Unit: 2184

Filed: June 20, 2001 :

Examiner: Not Yet Assigned

For: PERFORMING SPREADSHEET-LIKE
CALCULATIONS IN A DATABASE
SYSTEM :

PETITION TO ACCEPT LATE SUBMISSION
OF REQUEST TO RESCIND A PREVIOUS NONPUBLICATION REQUEST
UNDER 35 U.S.C. § 122(b)(2)(B)(iii) and 37 C.F.R. § 1.182

Commissioner of Patents
BOX DAC
Washington, D.C. 20231

Sir:

Applicant respectfully petitions the Director of the U.S. Patent & Trademark Office (USPTO) to accept late submission of a Request to Rescind Previous Nonpublication Request under 35 U.S.C. § 122(b)(2)(B)(ii), (iii). This petition is grantable for the following reasons.

1. **Facts.** This application was filed on June 20, 2001, with a non-publication request under 35 U.S.C. § 122(b)(2)(B)(i). On June 20, 2001, the applicant's assignee foreign-filed this application by filing a corresponding PCT application.

The applicant is represented in this application by the undersigned attorney and law firm. The law firm uses computer-based docketing system, Case Tracking System by Flextrac, to track all due dates and response dates in matters pending before the USPTO. The law firm updated the programming of this system in response to rule changes by the USPTO providing for 18 month publication of applications. On or about mid-June, 2001, members

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of the staff in the law firm office recorded a docket entry for the due date to file a Request to Rescind Previous Nonpublication Request in the docketing system. The law firm staff regularly printed due date reports from the docketing system, and the undersigned attorney for the applicant regularly reviewed the docket reports.

However, due to a rule programming error, the docketing system failed to print the due date for the Request to Rescind in any docketing report, for this application and all other applications handled by the law firm and subject to similar deadlines. As a result, the applicant unintentionally failed to file a Request to Rescind Previous Nonpublication Request within 45 days of the date of filing of the foreign applications, or by August 5, 2001 for this application.

In mid-September, 2001, an attorney in the law firm discovered and corrected the rule programming error described above. This Petition has been promptly filed thereafter. Thus, the entire delay in filing the required notice or request to rescind, from the due date for the same until the filing of this grantable petition, has been unintentional.

2. Applicable Law. An applicant may rescind a nonpublication request at any time, 35 U.S.C. § 122(b)(2)(B)(ii), and is required to notify the Director of any foreign filing not later than 45 days after the date of the filing of a foreign or international application. See 35 U.S.C. § 122(b)(2)(B)(iii). Filing a request to rescind a previous nonpublication request constitutes the notice required by statute under current USPTO practice. See Form PTO/SB-36 (11-00), "Note." While a failure to provide notice of foreign filing or rescind a nonpublication request within 45 days of a foreign filing of the same invention may cause constructive abandonment of an application, the USPTO is required by statute to accept such notice late, and cannot hold an application abandoned, if the applicant shows to the

satisfaction of the Director that the delay in submitting the notice was unintentional. See 35 U.S.C. § 122(b)(2)(B)(iii).

3. Requested Relief. A Request to Rescind Previous Nonpublication Request accompanies this petition. Applicant has shown, by the facts given above, that the delay in submitting such notice has been unintentional. Therefore, the applicant respectfully requests the USPTO to accept the enclosed Request at this time as is proper under the statute.

4. Petition Fee. This petition is made under 35 U.S.C. § 122(b)(2)(B)(iii), and not for unintentional abandonment under 37 C.F.R. §§ 1.213(c) or 1.137(b). Therefore, a petition fee of \$130.00 as specified in 37 CFR § 1.17(l) for petitions under 37 C.F.R. § 1.182, in the form of a law firm check, is submitted herewith.

The USPTO is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the consideration of this petition.

Respectfully Submitted,

HICKMAN PALERMO TRUONG & BECKER LLP



October 11, 2001

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(Certificate of Mailing by Express Mail follows)

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